CF0000064264

(2)

CA 2317/2000

XII-89(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. ST NO. 31/97 Name - रेशमलाल

Father's name - सालिकराम पु. बरखाली धाडा. जोजगीट कि. जो सागिल-चांपा (म.प्र.)

Residence - 35 2 मा-5पु. Age - 80 वर्ष

Sentenced to - आ. कारावास on - 22-8-2000

Under Section - 5पु 500 रु-या 3 मा ई by अपर सत्र न्यायाधीश जांजगीर चांपा

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should not appear.

1. Date of Application for copy of Judgement- अंतिम निर्णय प्रति लिखि ।
2. Date on which copy received- 24-8-2000
3. Date on which Appeal sent- 31-8-2000
4. Whether the prisoner wishes to be represented or not-

No. ST NO- 31/97 Name रेशम लाल पि. सालिकराम

Confined in - केन्द्रीय Jail- बिलासपुर (मध्य प्रदेश)

No. 74 Dated - 31-8-2000

Forwarded to the सीजीआर रविं. मध्य. मार्ग नवीन उच्चन्या. मध्यप्रदेश जबलपुर ।

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

High Court of Madhya Pradesh
JABALPUR.
4 SEP 2000
Reg. No. 150
Asstt. Clerk
High Court Branch

Superintendent
Jail

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate Court-

---

No. Date 199

Forwarded to the :-

Date of receipt in Appellate Court -

(28)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.2317 of 2000

Reshamlal

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
29-11-2005

HON'BLE MR. JUSTICE DILIP R. DESHMUKH

I Agree

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST FOR JUDGMENT ON 30TH NOVEMBER, 2005

Sd/-
L.C.BHADOO
Judge
29-11-2005

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.2317 of 2000

Reshamlal

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mrs. Kiran Jain, Advocate: For the appellant.

Mr. M.P.S. Bhatia & Mr. Ravindra Agrawal, Panel Lawyers: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. DILIP R. DESHMUKH, JJ.

JUDGMENT

(Delivered on 30th November, 2005)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*: -

1. By this criminal appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of judgment of conviction and sentence dated 22nd August, 2000, passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No.31/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty of commission of the offence under Section 302 of the I.P.C. for committing the murder of his son Shatrughan sentenced him to undergo imprisonment for life.

2. In brief, the prosecution case is that on 14-11-1996 at about 14:45 hours Sanjay Kumar (PW-3), son of deceased Shatrughan, lodged an oral report Ex.P-4 in Police Station: Janjgir that today in the morning his father was fencing with Beshram bush on the boundary of his kitchen garden after cleaning the same. His grandfather Reshamlal was also working with him. At about 11 a.m. Reshamlal picked up the Kudali which was lying there and attacked his father (Shatrughan) on his head, on account of which his father fell down, however, Reshamlal brought an axe and again assaulted Shatrughan

by the said axe on his left leg & left hand as a result of which his left leg was fractured, and Reshamlal left the place considering Shatrughan as dead. The said incident has been witnessed by his sister Anita. He immediately went to the Village Kotwar, informed about the incident and went to Police Station to inform about the said incident. On receiving this report, Station In-charge Officer V.S. Kerketta (PW-15) registered the case under Section 307 of the I.P.C. vide F.I.R. (Ex.P-14) and during investigation, he recorded the evidence of the witnesses. On 14-11-1996, S.N. Pateria (PW-16), the Station House Officer, Police Station: Janjgir, took into possession the weapon of offence, axe, under Ex.P-1. On 15-11-1996 after giving notice to the Panchas (Ex.P-6) prepared the Panchanama of the dead body of Shatrughan (Ex.P-7) and sent the dead body of Shatrughan to Primary Health Centre, Janjgir under Ex.P-9 for post mortem. On 15-11-1996, he took into possession broken pieces of bone and also the weapon of offence Kudali, blood stained soil as well as the plain soil from the place of occurrence under Ex.P-3 and recorded the evidence of witnesses.

3. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir, received the case on transfer. Learned Additional Sessions Judge framed the charge under Section 302 of the I.P.C., read over and explained to the accused/appellant. The appellant abjured the guilt and pleaded innocence.

4. The prosecution in order to prove the offence against the accused/appellant examined as many as 17 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of the accused under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence appearing against him and submitted that he is innocent, and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, and after perusal of the prosecution evidence convicted and sentenced the accused/appellant under Section 302 of the I.P.C.

5. We have heard Mrs. Kiran Jain, learned counsel for the accused/appellant and Mr. M.P.S. Bhatia, Panel Lawyer with Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

6. Learned counsel for the accused/appellant did not dispute about the nature of death of the deceased. Apart from that, from the evidence of eyewitness Sanjay Kumar (PW-3), who lodged report in the Police Station; Rohit Kumar (PW-5); Anita (PW-7); Kum. Uttra (PW-11); and the evidence of Dr. H.R. Dharwani (PW-8) to the effect that he conducted post-mortem on the body of Shatrughan on 15-11-1996 and noticed as many as nine injuries out of which injury Nos.1, 2, 3 & 4 were incised wounds on the head, and that temporal, occipital & parietal bones were found fractured, in his opinion, the injuries were sufficient in the ordinary course of nature to cause the death, and were anti-mortem in nature and the death of Shatrughan was homicidal in nature, it stands established that the nature of the death of Shatrughan was homicidal.

7. As far as the involvement of the accused in committing the murder of his son Shatrughan is concerned, learned counsel for the accused/appellant has not disputed this fact also. However, she argued that the accused assaulted the deceased without any premeditation or preplan, all of a sudden in a heat of passion, as there was some dispute regarding land with his son Shatrughan who was not giving share to his brother. Therefore, learned counsel submitted that the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C. and the accused has been wrongly convicted under Section 302 of the I.P.C.

8. On the other hand, learned Panel Lawyers supported the judgment of the trial Court.

9. Now, coming to the point of involvement of the accused/appellant in committing the murder of Shatrughan, Sanjay Kumar (PW-3), who is the son of the deceased and grand son of the accused/appellant, was the eyewitness. PW-3 has stated in his evidence that on the fateful day in the morning, his father was working in the kitchen garden, at that time, the accused/appellant picked up Kudali and assaulted on his father's head 2-4 times, thereafter, he brought axe from the house and again assaulted on the leg & hand of his

father, as a result of which his father became unconscious and blood started oozing out of the injuries. On seeing this, the accused left the scene of occurrence. Apart from him (PW-3), his sisters namely, Amita (PW-7) & Kum. Uttra (PW-11) had also seen the incident. Thereafter, Sanjay Kumar (PW-3) went to inform to the Secretary & Kotwar of the village from where he went to lodge report in the Police Station and he lodged the report Ex.P-4. This witness has stated that he was at his house at the time of incident and he was taking meals, the place of occurrence was visible from the place where he was taking meals. The evidence of this witness has been corroborated by the evidence of PW-7 Amita, sister of this witness, she has stated that she was present in the house at the time of incident and his grandfather assaulted his father with Kudali and thereafter with axe. Kum. Uttra (PW-11), another daughter of the deceased, has also corroborated the above evidence. In cross-examination of these witnesses, the defence counsel could not elicit any fact, which makes the evidence of these witnesses untrustworthy or unreliable. Moreover, these witnesses are so closely related to the accused also and there was no occasion for these witnesses to implicate their grandfather in a false case.

10. Moreover, Lakhanlal (PW-4) has stated in his evidence that there was some dispute regarding partition between deceased Shatrughan and his brother Chatur. Chatur used to work with Lakhanlal and live at his house. On the fateful day at about 6 p.m. when he returned from his field accused Reshamlal came to his house and informed that he has assaulted his son and going to the Police Station. Therefore, from the above fact it has been established that the accused himself made oral extra judicial confession before PW-4 and in the cross-examination nothing has been brought out which makes the evidence of this witness untrustworthy. He is an independent witness and there was no occasion for him to depose against Reshamlal to implicate him in the false case. Therefore, this extra judicial confession also corroborates the evidence of the eyewitnesses.

11. From the medical evidence also the evidence of the eyewitnesses stands corroborated because Dr. H.R. Dharwani (PW-8) has stated in his evidence that he conducted the post-mortem on the body of Shatrughan on 15-11-1996

and he noticed as many as nine injuries which were on the head, hand & leg and these injuries were in the nature of incised wounds and crush injury. He has further stated that he prepared the post-mortem report Ex.P-10 and the injuries which were found on the body of the deceased could be caused by the weapons of offence i.e. axe & Kudali which were recovered from the accused and from the place of occurrence. Therefore, there is ample evidence on record, which connects the accused with the murder of Shatrughan. In the circumstances, we do not find any substance in the appeal as far as the question of accused being author of the crime and to that extent, the finding of the trial Court is based on legal and reliable evidence.

12. Now, coming to the argument of learned counsel for the accused/appellant that looking to the facts and circumstances of the case, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C., in order to attract Exception 4 to Section 300 of the I.P.C. it has to be seen whether looking to the evidence of the prosecution it can be held that the accused/appellant committed the murder without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without offender's having taken undue advantage or acted in a cruel or unusual manner. Before reaching to the conclusion that the case of the accused/appellant is covered under Exception 4 to Section 300 of the I.P.C. it has to be seen that (i) the murder was committed without premeditation in a sudden fight; (ii) in the heat of passion upon a sudden quarrel; and (iii) without the offender's having taken undue advantage or acted in a cruel or unusual manner.

13. Perusal of the evidence of the eyewitnesses namely, Sanjay Kumar (PW-3), Amita (PW-7) & Kum. Uttra (PW-11) reveals that in the first instance the accused/appellant without any reason or rhyme, picked up the Kudali and attacked his son Shatrughan on his head 2-3 times as a result of which, as per the medical evidence, the deceased received

(i) one incised wound: 1.5" x ¼" x ¼" on right supra orbital region;

(ii) lacerated wound: 4" x 1" x skin deep on right temporal region;

(iii) lacerated wound: 2" x ½" x skin deep on occipital parietal region;

(iv) lacerated wound: 4" x 1" x skin deep on left side of occipital region 2" below the occipital parietal joint;

(v) incised wound: 1.5" x ½" x ½" on right forearm;

(vi) incised wound: 6" x 1" x ½" on left forearm;

(vii) incised wound: 3" x ½" x ½" situated 1" above injury No.1 to 6 on the right forearm;

(viii) incised wound: 4" x 1" x 1" situated 2" above injury No.7 on the right forearm;

Temporal, occipital and parietal bones were found fractured.

Thereafter, the accused again brought axe from his house and assaulted the deceased with the axe on his left leg & hand as a result of which the deceased received crush injury of the size of 6" x 4" x bone deep situated on middle of left leg. Tibia and fibula were fractured and exposed externally.

14. The intention of the accused can be gathered from the nature of injuries he caused, the weapons of offence he used and the part of the body where he caused the injuries. In the first instance, the accused attacked the deceased on his head with an iron Kudali as a result of which the head bones were fractured. The accused did not stop there, he went into his house, brought an axe and again assaulted the deceased on his left leg as a result of which the bones were fractured. The above conduct of the accused, nature of injuries and weapons of offence used show that the accused was merciless while assaulting his son and he assaulted with deadly weapons. In order to ensure that death is caused, the accused brought axe from his house and assaulted again. Therefore, in the above facts, there is nothing on record in cross-examination of the eyewitnesses that the accused assaulted all of a sudden in a heat of passion and without taking undue advantage in cruel or casual manner. In fact, without any instigation from the deceased the accused assaulted him in a cruel manner while he was working in the kitchen garden. Nothing has come in cross-examination of the witnesses that the deceased in any way instigated the accused.

15. Therefore, we are of the considered opinion that based on the nature of injuries and the prosecution case, it is difficult to accept the argument advanced by learned counsel for the accused/appellant. Judgment of the Apex Court in the matter of **Shanmugam alias Kulandaivelu v. State of**

Tamil Nadu reported in 2003 Cri.L.J. 418 (Supreme Court) is of no help to the accused/ appellant because in that case the Apex Court reached to the conclusion that the incident started on a petty quarrel which sparked off by the admonition given by the deceased for his alleged misbehaviour in whistling and all of a sudden, he entered his house, picked up the weapon and attacked and inflicted injuries on the deceased, whereas, facts of the present case are entirely different.

16. In view of the above discussion, we are of the considered opinion that the finding of the trial Court that the accused/appellant committed the offence of murder is based on legal evidence, which does not require interference by this Court.

17. In the result, we do not find any merit in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Soma